

SERVICE DATE – JUNE 26, 2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 779X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—  
IN TRUMBULL COUNTY, OHIO

Decided: June 25, 2019

CSX Transportation, Inc. (CSXT), filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 13.9 miles of rail line on its Newton Falls Subdivision, between milepost BGA 86.1 and milepost BGA 100.00, in Trumbull County, Ohio (the Line). Notice of the exemption was served and published in the Federal Register on May 30, 2018 (83 Fed. Reg. 24,837). The exemption became effective on July 9, 2018.

By decision and notice of interim trail use or abandonment (NITU) served on July 6, 2018, the proceeding was reopened and the Board imposed a salvage-related condition and a historic preservation condition under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, recommended by the Board's Office of Environmental Analysis (OEA). The Section 106 condition requires CSXT to (a) retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or are listed in the National Register of Historic Places until completion of the Section 106 process of the NHPA, (b) report back to OEA regarding any consultations with the Ohio History Connection (the State Historic Preservation Office, or SHPO) and the public, and (c) not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed the condition.<sup>1</sup>

In a Supplemental Final Environmental Assessment (EA) dated May 3, 2019, OEA states that it received a letter from the Miami Tribe dated July 6, 2018. In its letter, the Miami Tribe states that it has no objection to the proposed abandonment, but because the proposed abandonment is located within Miami Tribe's aboriginal homelands, requests that salvage operations immediately cease and that it be notified should any human remains or artifacts be

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<sup>1</sup> The July 6 decision also authorized the Trumbull County Commissioners to negotiate an interim trail use/rail banking agreement with CSXT for the Line pursuant to § 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d), and imposed a public use condition under 49 U.S.C. § 10905. The interim trail use/rail banking negotiating period expired on January 2, 2019, and the public use condition expired on January 5, 2019.

discovered during salvage. Thus, OEA recommends that a new condition addressing such unanticipated discoveries be imposed.

OEA also states that it received a reply letter from the SHPO dated April 22, 2019, concurring with OEA's determination that no historic properties would be affected as a result of the proposed abandonment. OEA states that the Board has therefore satisfied its responsibilities under Section 106 and recommends that the Board remove the Section 106 condition.

Consistent with OEA's recommendation, this proceeding will be reopened, the condition recommended in the Supplemental Final EA concerning unanticipated discoveries will be imposed, and the previously imposed Section 106 condition will be removed. The salvage-related condition imposed in the July 6, 2018 decision remains in effect.

The proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the Section 106 historic preservation condition imposed in the July 6, 2018 decision is removed. Further, CSXT's exemption is subject to the additional condition that, in the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during salvage activities, CSXT shall immediately cease all work and notify OEA and the SHPO, pursuant to 36 C.F.R. § 800.13(b). OEA shall then consult with the SHPO, CSXT, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.
3. This decision is effective on its date of service.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.